

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 1, 4, 6, 7, 10, and 12 are currently being amended.

Claims 3 and 9 are canceled.

This amendment adds, changes and/or deletes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 1-3, 4-8, and 10-20 (18 claims) are now pending in this application.

The Office Action of March 31, 2004, and the references cited therein have been considered. In response to the rejections stated in the Office Action, the claims have been amended to clarify important distinctions over the cited prior art and to clarify any ambiguity cited by the Examiner, as explained below. As demonstrated, however, each of the rejections is believed overcome, with the application being placed in condition for allowance.

Accordingly, reconsideration and allowance of this application is respectfully requested.

On page 2, paragraph 2 of the Office Action, the Examiner has rejected claims 1-15 and 18-20 under 35 U.S.C. §112, first paragraph. The Examiner believes that the claim contains subject matter that was not described in the specification. Specifically, the Examiner believes that the previous amendment to independent claims 1, 7 and 13 in which the phrase "without a separate pad retainer" was added is not supported in the original application papers. The Examiner believes that this is a new matter rejection.

On May 18, 2004 in a telephone interview with Examiner Bushey and the undersigned, the undersigned pointed out that in paragraph 0028 of the present application, it is stated "in this configuration, the novel inner panel 24 retains the pad element 22 within the

pad frame 16, thereby replacing the open wire frame pad retainer of prior art". After some additional discussion, the Examiner agreed that the present specification as originally filed does support the previously amended independent claims concerning the phrase "without a separate pad retainer". Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection of claims 1-15 and 18-20 under 35 U.S.C. §112 first paragraph.

On page 2, paragraph 4 of the Office Action, the Examiner has rejected claims 1, 2, 7, 8 and 13-20 under 35 U.S.C. §102(b) as being "clearly anticipated by Anderson (USPN: 3,738,621)". The Examiner specifically cites Figure 2; Col. 4, lines 36-45 of Anderson.

Applicant respectfully traverses the Examiner's characterization of Anderson as "clearly anticipating" that which is disclosed and claimed in the present application.

Applicant reiterates its discussion with respect to the §102 rejection with respect to Anderson as set forth in the previous amendment filed February 28, 2004. Further, the undersigned and Examiner Bushey discussed, also on May 18, 2004, concerning the addition of the word "louvered" in independent claims 1 and 7 from dependent claims 3 and 9 respectively. Claims 3 and 9 are canceled. Claims 4 and 6 which depended from claim 3 are amended to depend from claim 1. Claims 10 and 12 which depended from claim 9 are amended to depend from claim 7. With such amendments, and the discussion following with respect to Anderson, it is the undersigned's understanding that the Examiner will withdraw his rejection of claims 1, 2, 7, 8 and 13-20 under 35 U.S.C. §102.

Anderson discloses a roof top evaporative cooler for cooling the interior of vehicles. (See Col. 2, lines 47-49.) Anderson also requires a separate convex metal grid 44 to retain the media pad 38 within the cooler. (See Fig. 2 and Col. 4, lines 33-36.)

In contrast, Applicant specifically states that their "inner panel 24 retains the pad element 22 within the pad frame 16, thereby replacing the open wire frame pad retainer of prior art". (See present specification paragraph 0028 and Fig. 3 of the present specification.) Applicant has amended independent claims 1, 7 and 13 to indicate that the pad element 22 is held between the outer panel 18 and the inner panel 22 "without a separate pad retainer". Applicant submits that Anderson is an example of the prior art which the present

specification improves upon by eliminating the convex metal grid 44 pad retainer required by Anderson. Accordingly, independent claims 1, 7 and 13, as amended, are not anticipated by Anderson. Likewise, claims 2-6, 8-12, and 14-15 which depend either directly or indirectly from their respective independent claims are therefore also not anticipated by Anderson. Accordingly, Applicant respectfully requests that the Examiner withdraw his rejection of claims 1, 2, 7, 8 and 13-20 under 35 U.S.C. §102(b).

On page 3, paragraph 6 of the Office Action, the Examiner has rejected claims 3-6, and 9-12, under 35 U.S.C. §103(a) as being unpatentable over Anderson taken together with any one of Mallet (USPN: 1,743,974), Cooper (USPN: 1,798,307) and Huntington (USPN: 3,791,102). The Examiner believes that Anderson substantially discloses Applicant's invention except for the outer panel including louvered openings that essentially mirror those provided by the inner panel. The Examiner also believes that each of the secondary cited prior art patents, when combined with the teaching of Anderson would have been obvious at the time of the invention to provide the outer (inlet) panel of Anderson with louvered openings, specifically having a mirror arrangement relative to the louvers of the inner panel to retain the majority of moisture in the pad.

Applicant submits that one ordinarily skilled in the would not look to Anderson, Mallet, Cooper or Huntington to provide that which is disclosed and claimed in the present invention. Applicant's comments with respect to Anderson above, are reiterated here. Specifically, Applicant points out that Anderson discloses and claims a vehicle roof top cooler. (Emphasis added.) With respect to the secondary references, as best understood, those references are for industrial or commercial treatments of gas.

As acknowledged by the Examiner, Anderson does not disclose or teach or suggest that the inlet and outlet openings be in a mirror arrangement to facilitate movement of air through the cooler and through the pad. Further, Anderson does not suggest or teach that the pad can be retained by an inner and outer panel of louvered openings to retain the pad element without an additional wire frame pad retainer.

Cooper discloses louvered openings with the louvers angled in an upper direction as shown in Fig. 3. In addition, Cooper does not disclose or teach or suggest a “pad element” rather, as best understood, Cooper discloses loose materials contained in the tower as described in page 2, lines 101-114 and as illustrated in Fig. 3.

Mallet does not suggest or teach the inlet and outlet louvers are used to retain the filling R in the receptacle. Mallet, also does not disclose or teach or suggest a “pad element” as being contained in the respective towers. Mallet merely states, on page 1, lines 93-96 that the liquid flows through the “filling R” into the receptacle at the bottom. Note, there is no indication as to what the “filling” is and the illustration suggests that it is a loose filled material in the tower.

Huntington discloses inlet grills 13 and 14 and outlet grills 14 and 15 in a stacked bed arrangement but does not disclose or teach that the grills have louvered openings nor that they are aligned in a mirror arrangement. Huntington also describes the material through which a liquid passes as being “large diameter packing 30 in the packed bed 11” (see col. 3, lines 45-47) and an additional layer of small diameter packing 29 (see col. 3, lines 47-51 and Fig. 1 of Huntington).

There is no teaching or suggestion in any of the secondary references cited by the Examiner that disclose a “pad element” as described and claimed in the present application. The present application shows, specifically in Fig. 2, element 22, again in Fig. 3, element 22 as being a pad element. (For the Examiner’s convenience, Applicant has included a copy of the published present application (US 2003/0094710)).

In paragraph 0026 of the present application, Applicant states “when assembled, the outer panel 18 and the inner panel 24 of the pad frame 16 define the pad space for enclosing the pad element 22 and supportively holding the pad element in a substantially vertical orientation without unduly compressing the pad element 22”. Further, in col. 3, paragraph 0027, Applicant discloses that “when assembled, the inner panel 24 is removably attached to the outer panel 18 thereby enclosing the space and retaining the pad element 22 and facilitating pad replacement”. Mallet, Cooper nor Huntington do not disclose or teach or

suggest that a pad, as described and claimed in the present application is utilized in their devices. It is clear in the description and illustrations of the present application that the pad element 22 is a single cushion-like member composed of natural or synthetic materials but contained in a pad or cushion configuration, rather than loose material as disclosed in the three secondary references cited by the Examiner in his §103 rejection.

Applicant submits that one ordinarily skilled in the art would not combine Anderson with any of Mallet, Cooper or Huntington. Further, even if Anderson and one of the three secondary references were combined, they would not produce that which is disclosed and claimed in the present application since Anderson does not suggest or teach the elimination of layer frame pad retainer. Cooper, Huntington and Mallet show loose fill material that could not properly be retained by the Anderson assembly nor does Anderson teach or suggest that the pad element in the evaporative cooler be retained between an inner and outer panel without a wire pad frame.

Additionally, there is no suggestion in the references as to how to combine the Anderson, Mallet, Cooper and Huntington devices. Combining the devices would require a substantial amount of reconstruction and redesign given the different configurations of the various devices and the lack of, in Mallet and Cooper, the type of film material used in their devices; MPEP 2143.1.

Applicant therefore respectfully submits that claims 3-6 and 9-12 which depend either directly or indirectly from the amended independent claims are patentable over the cited references and specifically request that the Examiner withdraw his rejection of the claims under 35 U.S.C. §103(a).

Applicants have attempted to amend the claims to the extent necessary to distinguish them over the prior art, but with the intent of not limiting the scope of the invention protection afforded by the patent laws and these claims any further any absolutely necessary. It is respectfully submitted that each outstanding rejection has now been overcome, and that each claim is in condition for allowance.

Applicant believes that the present application is now in condition for allowance.
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

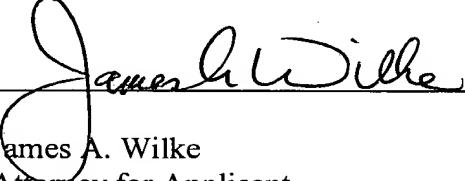
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

Date 05-20-04

FOLEY & LARDNER
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202-5306
Telephone: (414) 297-5776
Facsimile: (414) 297-4900

By


James A. Wilke
Attorney for Applicant
Registration No. 34,279